



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR, MNRL-S, FFL

Introduction

In this dispute, the landlord sought an order of possession for a breach of a vacate clause and an order of possession for unpaid rent, pursuant to sections 46 and 55, respectively, of the *Residential Tenancy Act* (the “Act”). They also sought compensation for unpaid rent and recovery of the filing fee, pursuant to sections 26 and 67, and 72, respectively, of the Act.

The landlord applied for dispute resolution on June 8, 2020 and a dispute resolution hearing was held on July 6, 2020. The landlord and her daughter attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord gave evidence that the tenant was served with the Notice of Dispute Resolution Proceeding package by way of Canada Post registered mail on June 12, 2020. A copy of the registered mail receipt and tracking number were submitted into evidence; the Canada Post tracking website indicated that the package was delivered on June 18, 2020.

Based on this undisputed oral and documentary evidence I conclude that the tenant was served in compliance with section 89 of the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to an order of possession for breach of vacate clause?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to a monetary order for the filing fee?

Background and Evidence

The tenancy started on February 1, 2020 and was a fixed term tenancy ending May 1, 2020, at which point the tenancy was to continue as a month-to-month tenancy. Monthly rent is \$625.00, due on the first of the month, and the tenant paid a security deposit of \$310.00. A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that the tenant stopped paying rent in March 2020 and as such they issued a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") on March 24, 2020. A copy of the 10 Day Notice was submitted into evidence. It indicated that unless the tenant paid the rent within 5 days or disputed the 10 Day Notice that the tenancy would end on April 5, 2020.

I note, as an aside, that the 10 Day Notice was served before the provincial state of emergency went into effect, and as such the notice is valid. There is no evidence that the tenant disputed the 10 Day Notice. As of today, July 6, 2020, the tenant is in arrears for five months' worth of rent in the amount of \$3,125.00.

The landlord was not entirely clear as to whether the tenant was still residing in the rental unit, but there does appear to be some movement of the tenant coming and going to and from the rental unit.

Additional amounts claimed for cleaning, moving, and a lock change are not considered, given that they are, according to the landlord, approximate future costs not yet incurred.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Order of Possession for Unpaid Rent

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the tenant's failure to pay rent for March to July 2020, inclusive, and regarding the tenant's failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the landlord. This order is effective two days after service upon the tenant. Further, I also conclude that the tenancy ended on April 5, 2020.

Given that I issue an order of possession for unpaid rent I need not consider the landlord's application for an order of possession for breach of a vacate clause.

Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support her submission, that the tenant did not pay rent when it was due under the tenancy agreement, and did not pay rent for March to July 2020, inclusive. Further, there is no evidence before me that the tenant had a right under the Act to not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for unpaid rent in the amount of \$3,125.00.

Claim for Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant her claim for reimbursement of the filing fee in the amount of \$100.00

Summary of Award and Order

The total monetary award is therefore \$3,225.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” Given that it is now after the end of the tenancy, which ended April 5, 2020, I order the landlord to retain the tenant’s security deposit of \$310.00 in partial satisfaction of the above-noted award. A monetary order for the balance of \$2,915.00 is issued to the landlord.

Conclusion

I grant the landlord a monetary order in the amount of \$2,915.00, which must be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under s. 9.1(1) of the Act.

Dated: July 6, 2020

Residential Tenancy Branch